THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 19146 of 2001

O r d e r:

The award dated 18.06.2001, passed by Labour Court-II, Hyderabad, in I.D. No. 140 of 1998, published on 30.07.2001, is called in question in this writ petition.

The petitioner was appointed as Conductor in 1986 with the respondent-APSRTC. On 17.10.1997, while he was conducting the bus, a check was exercised, and for certain irregularities, he was issued a charge memo. The petitioner gave spot explanation. Thereafter, a charge sheet was issued to the petitioner, to which he gave a detailed explanation. Dissatisfied with the explanation, an enquiry was ordered by the respondents. The Enquiry Officer, who conducted the enquiry, reported the charges proved. Based on the findings of the enquiry report, vide order dated 28.03.1998, he was removed from service. The petitioner claims to have filed appeal, and when no orders were passed in the appeal, he raised an industrial dispute in I.D. No. 140 of 1998, and the Labour Court vide award dated 18.06.2001, upheld the order of removal. Assailing the said award, the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that though the petitioner by not issuing tickets to five passengers, had violated the rule of "Issue and Start", the fact remains he did not collect any fare from them. He submits that when an allegation of collection of fare and non-issuance of tickets is alleged, the checking officials are duty-bound to check if any excess cash is with the conductor, which they did not do. He submitted that the petitioner neither misappropriated the amounts nor had any *mala fide* intention to misappropriate the amounts, the petitioner having not misappropriated any amounts, for a case of non-issuance of tickets, the punishment of removal from service imposed by the disciplinary authority on the petitioner, as confirmed by the Labour Court is highly disproportionate, and in support of this submission, he placed reliance on judgments of this Court in **S. Pulla Reddy v. Depot Manager, APSRTC** and of the Gujarat High Court in **Divisional Controller, S.T. Corpn. V. Virji D. Barot**.

He submitted that the petitioner has not instigated the passengers, and though the factum of instigation of passengers by the petitioner was not spoken to by the checking officials, the Labour Court committed in placing reliance on the report of the TTI's for upholding the punishment of removal from service imposed by the disciplinary authority. He submitted that the report of the TTI's could not have been relied upon, unless the misconduct alleged against the delinquent is proved in the departmental enquiry, and in support of this submission, he placed reliance on the

judgment of the Division Bench of this Court in **Depot Manager, APSRTC v. Mohd. Ismail**.

He submitted that the findings arrived at by the Labour Court that the TTI's traveled in the bus is based on no evidence as they came in their Motor Cycle. He submitted that the Labour Court had considered only some portion of the evidence given by one passenger, namely Srilatha, and discarded the balance portion from consideration, and non-consideration of the entire evidence, is certainly an error apparent on the face of record, requiring interference by this Court in exercise of its certiorari jurisdiction. He further submitted that the Labour Court had committed gross error in taking the previous service record of the petitioner in upholding the punishment of removal from service imposed on him by the disciplinary authority. In support of his submission that the Labour Court while exercising its discretion under Section 11-A of the Industrial Disputes Act, cannot take conduct of a delinquent employee and should arrive at conclusions based on the materials placed before it, placed reliance on the judgments of this Court in **A.P.S.R.T.C. v. K. Jelman Reddy** and **A.V. Swamy v. I.T-cum-L.C.**. He thus prayed that the impugned award be set aside and the writ petition be allowed.

The respondents, though did not file counter, but the Standing Counsel representing them, supported the impugned award. He contended that the petitioner did not dispute the procedural aspects of the domestic enquiry. The Labour Court having appreciated the entire evidence on record, upheld the findings arrived at in the departmental enquiry, and though the Labour Court made incidental reference to the past conduct of the petitioner, it in fact, did not take the past conduct, inasmuch as while upholding the punishment imposed against the petitioner, took into consideration the quantum of amount misappropriated. He submitted that having regard to the nature of misconduct alleged against the petitioner, which stood in the enquiry, it cannot be said that the punishment of removal from service imposed on the petitioner is disproportionate.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-APSRTC.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India to issue a writ of certiorari are limited to – firstly to correct errors of jurisdiction when the inferior Court or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the face of the record, and thirdly correct and interfere with the findings that are base on suspicion, conjectures or surmises or no reason. It is within these parameters, the award of the Labour Court has to be examined.

The petitioner, as can be seen from the award, did not allege any procedural irregularity in the conduct of the enquiry. He admitted that he had not issued tickets to five passengers. Non-issuance of tickets, is violation of the rule of "Issue and Start".

Though the petitioner contends that he did not issue tickets and did not collect fare from the passengers, the Labour Court upon consideration of the

evidence on record found that passengers in their spot statement given to the checking officials in the presence of the service driver, stated that they paid the fare amount to the petitioner, and that the petitioner having collected the fare from them, did not issue the tickets. Though the petitioner made an endorsement on the statement taken from the passengers that the statement is false, the fact remains, the recording of statement of the passengers by the checking officials, was admitted to by the service driver in his evidence. And keeping in view the hostile conduct of the petitioner, the checking officials after exercising the check, issued charge memo immediately to the petitioner at Bhongir Depot. Therefore, there was no occasion for checking officials to tamper with the statements. In that view of the matter, no exception can be taken to the award of the Labour Court confirming the findings arrived at by the Enquiry Officer, based on the TTIs report.

There is no doubt that misconduct of a delinquent should be proved only in the departmental enquiry. Though one of the passengers, namely Srilatha, before the Enquiry Officer, had stated that to escape the penalty they have informed the checking officials that they paid the ticket fare to the conductor, and that the conductor having collected the fare did not issue the tickets, but the Enquiry Officer as well as the Labour Court, did not take the said version, for if the said version was to be believed, it was to belie the endorsement made by the petitioner on the statement of the passengers, and if the endorsement of the petitioner on the statement of the passengers was to be accepted, it was to belie the statement of the passenger. However, the Labour Court taking into consideration the other circumstances, namely the closure of S.R. even before issuance of tickets to passengers, upheld the findings of the Enquiry Officer. Therefore, it cannot be said that the Labour Court has not considered the entire evidence on record. Though the petitioner denied having instigated the passengers, the report of the TTIs, based on which the Labour Court upheld the findings of the Enquiry Officer, reports that when the TTI was about to record the statement of the passengers, the petitioner pounced upon them, and with great difficulty, the other TTI had recorded the statement of the passengers. Therefore, it cannot be said that the petitioner has not instigated the passengers.

There can be no doubt that under Section 11-A of the Industrial Disputes Act, 1947 wide discretion is conferred upon the Labour Court/Industrial Tribunal, to reappraise the material available on record and substitute its own findings for that of the disciplinary authority, and where it feels that the punishment awarded by the disciplinary authority is too harsh and not in proportion to the proved misconduct or is shocking to conscience of the Court can award lesser punishment. There also can be no dispute that the Labour Court/Industrial Tribunal, shall rely on the materials available before it and not take into consideration the past conduct of a delinquent to arrive at its findings.

In the instant case, the Labour Court having concurred with the findings arrived at by the Enquiry Officer and the disciplinary authority, merely out of anxiety made incidental reference to the past conduct of the petitioner, and by making such incidental reference to the past conduct, it cannot be said that the Labour Court had taken the past conduct of the petitioner to uphold the punishment of removal from

service imposed on the petitioner by the disciplinary authority, and more so when it had upheld the findings of the Enquiry Officer and the disciplinary authority. The apex court in **V. Ramana v. A.P.S.R.T.C.**, held that the Labour Court while interfering with the punishment imposed by the disciplinary authority, should exercise its discretion under Section 11-A of the Industrial Disputes Act, 1947 judiciously, and should interfere only when the administrator's decision is illogical or suffered from procedural impropriety or was shocking to the conscience of the Court and that it was in defiance to moral standards. In the instant case, the Labour Court having regard to the proved misconduct, namely non-issuance of tickets and misappropriation of money, upheld the punishment of removal from service imposed on the petitioner by the disciplinary authority, and it cannot be said that the punishment of removal from service imposed on the petitioner by the disciplinary authority as confirmed by the Labour Court, is disproportionate, warranting interference by this Court in exercise of its certiorari jurisdiction, and more so when the petitioner failed to show that there was procedural impropriety in the imposition of punishment.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

_____

N.V. RAMANA, J.

Date: 09th March, 2006.

KSR